

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-335-E - ORDER NO. 1999-890  
DECEMBER 20, 1999

IN RE: Robert C. McJimpsey,	)	ORDER DENYING
	)	SUMMARY JUDGMENT
Complainant/Petitioner,	)	AND ESTABLISHING
	)	PREFILING DATES
vs.	)	
	)	
Duke Power Company,	)	
	)	
Defendant/Respondent.	)	
	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion for Summary Judgment filed by Duke Power Company (Duke or the Company) in this complaint case filed by Robert McJimpsey (McJimpsey or the Complainant) against the Company. Oral argument was heard on the Motion on December 8, 1999 at 10:30 AM in the offices of the Commission, with the Honorable Philip T. Bradley, Chairman, presiding.

Duke provided electric service to the Complainant, and received payment for it. McJimpsey claims that he has overpaid for the service, and demands a refund. Duke claims that it has paid back all monies owed McJimpsey. The Complainant denies this allegation. Both parties filed and served opposing affidavits and memoranda to support their respective positions.

The law in this area is well-settled. Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Etheridge v. Richland Sch. Dist. 1, 330 S.C. 447, 499 S.E. 2d 238 (Ct. App. 1998). However, the Court must construe all ambiguities, conclusions and inferences arising from the evidence against the moving party. City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E. 2d 855 (1994).

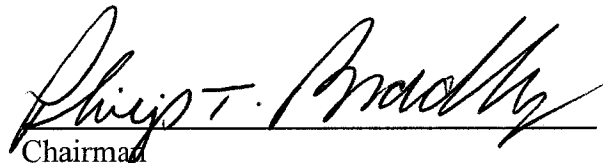
The oral argument and materials submitted clearly outlined the basic premise of this case. McJimpsey claims that Duke owes him a refund for overpayment, while Duke claims that it does not. Summary judgment is appropriate only when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Etheridge, supra. We hold that there is at least one material issue of fact before us, i.e. whether or not Duke owes McJimpsey any refund of any overpayments. We think this is the major issue for determination in this case. Accordingly, summary judgment must be denied. A full evidentiary hearing is therefore required.

Pursuant to this determination, we herein establish revised prefilng dates in this matter. Pursuant to 26 S.C. Regs. 103-869(C)(Supp.1998), the Commission hereby orders that twenty-five copies of the testimony and exhibits of the Complainant Robert C. McJimpsey shall be prefiled on or before **January 27, 2000**, and that twenty-five copies of the testimony and exhibits of the Respondent Duke Power Company shall be pre-filed on or before **February 10, 2000**. (Material may be post-marked on these dates.) Also, any rebuttal testimony and exhibits shall be pre-filed on or before **February 17, 2000**,

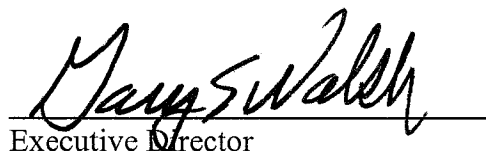
and any surrebuttal testimony and exhibits shall be pre-filed on or before **February 21, 2000**. (Material must be in the offices of the Commission and in the hands of the parties on these dates.) It should be noted that acceptance into the record of surrebuttal testimony and exhibits is subject to the discretion of the Commission. In addition, parties shall serve their pre-filed testimony and exhibits on all other parties of record as required by the Commission's Rules and Regulations. All parties are reminded that all witnesses must be present during any hearing in this matter at the call of the Chairman, or the Commission may decline to allow the witnesses' testimony to be read into the record of the proceeding, and/or may decline to allow the witnesses' exhibits to be entered into the evidence of the case.

Please take notice that any party requesting modification of this schedule must file a request for such modification with the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)